IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1167 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL THAKORBHAI CHIMANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1167 of 2002

MR MEHUL SHAH for MR GC RAY for Petitioner No. 1

MR KOTAK, A.G.P. for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 02/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Rule. learned A.G.P. Shri Kotak waives service

of Rule for the respondents. At the joint request of learned Counsel for the parties the matter is heard and disposed of today by this order.

2. Heard the learned Counsel for the party. Way back on 26.12.1984 Kalali Gram Panchayat permitted the petitioner to make construction on the land admeasuring 45 x 20 ft. in Survey No.50/2 of Kalali village. While putting up the construction he made encroachment upon the Government land admeasuring 104.38 sq.mtrs. on the adjoining land of Survey No.550/3. Thereafter, by his Application dated 18.6.1990 he requested the Collector, Vadodara - respondent No.2 to regularize the encroachment in accordance with the Rules existing at that time. Accordingly, by letter dated 16.5.1994 (Annexure : A) the Collector asked the petitioner to deposit Rs.33,924/into the Government Treasury within 10 days. It was also made clear in that letter that whatever price is fixed at the time of order he has to pay the difference immediately. The said amount was deposited on 1.11.1994.

3. Thereafter, the petitioner received letter dated 13.11.1994 calling upon him to deposit further amount of Rs.20,876/- by way of difference of the price fixed earlier and the prevailing market price of the land. Finally he was asked to deposit the said amount latest by 31.3.2001, but because of financial constraint he was not able to deposit the said amount. Therefore, his regularization Application was rejected, against which he preferred Revision. In Revision also he was given time, but he could not availed that and therefore his Revision Application was rejected. Hence, this petition.

4. Shri Mehul Shah for the petitioner submitted that he is poor agriculturist and because of two successive drought he was not in a position to pay the difference of amount of Rs.20,876/- by 31.3.2001, but now he has collected the funds and he has stated in this petition that he is prepared to pay the additional amount as fixed by this Court at the earliest. Therefore, regularization Application be granted.

5. Shri Kotal, learned A.G.P. for the respondent submitted that the market price is to be fixed again, therefore, the petitioner has to pay the substantial amount instead of Rs.20,876/- for regularization.

6. Considering the peculiar facts and circumstances of the case we are of the considered opinion that if the petitioner deposits in all Rs.27,000/- as difference

amount before the respondent No.2 Collector, Vadodara by 31.7.2003 then his regularization Application be granted.

In view of the above, this petition is disposed of. Rule is made absolute accordingly to the aforesaid extent. No order as to costs.

(B. J. Shethna, J.)

Date : July 02, 2003

(Akshay H.Mehta,J.)

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